

LEASE AGREEMENT
FM 1093 Trails

This Lease Agreement (this “**Lease**”) is made and entered into as of this 3rd day of April, 2023 (“**Effective Date**”), by and between the FORT BEND COUNTY TOLL ROAD AUTHORITY, a political subdivision of the state of Texas (the “**Landlord**”) and the 1093 RAILS TO TRAILS LOCAL GOVERNMENT CORPORATION, a public non-profit corporation organized under the laws of the State of Texas (the “**LGC**” or “**Tenant**”).

WITNESSETH:

WHEREAS, the Landlord is the owner or holder of certain real property and related rail corridor beginning at Milepost 20.42 at the Harris-Fort Bend County line and headed west to Milepost 61.2 near Eagle Lake, Colorado County, Texas, acquired from Southern Pacific Transportation Company (“**SP**”) by Metropolitan Transit Authority of Harris County, Houston, Texas (“**METRO**”) in 1992, save and except (i) portions thereof in Fort Bend County, Texas, and previously sold by METRO to Fort Bend County, Texas, in 2004, and to Harris County, Texas, in 2006, and (ii) all METRO lands located in Harris County, Texas [Milepost 3.48, near Dunlavy Street, Houston, Texas, west to Milepost 20.42] (“**METRO’s Retained Property**”), acquired from SP in 1992, which Rail Corridor Property has been and subsequently conveyed to Landlord (the “**Rail Corridor Property**”), as such Rail Corridor Property is further described and/or depicted on **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, the Rail Corridor Property is subject to (i) the Decision and Certificate of Interim Trail Use dated November 7, 2000 and any subsequent amendments, Surface Transportation Board (“**STB**”) Docket No. AB-33, issued under the National Trails System Act, 16 U.S.C. § 1247(d), STB regulations, and other applicable authority (the “**Railbanking Regulations**”), and (ii) the “**Interim Trail Use Agreements**” (herein so called), being (A) all agreements required by the Railbanking Regulations, as defined in Certificate of Interim Trail Use (“**CITU**”) issued by STB in Union Pacific Railroad Company – Abandonment—in Harris, Fort Bend, Austin, Wharton and Colorado Counties, Tex., AB-33(Sub-No. 156,), as modified in Harris County, Texas on December 1, 2006, in AG-33 (Sub-No. 156), and (B) all agreements required by the Railbanking Regulations, as defined in Notice of Interim Trail Use (“**NITU**”) issued by STB on March 24, 2008 in Union Pacific Railroad Company – Abandonment—in Colorado and Wharton Counties, Tex., (Sub-No. 253X), recorded in Vol. 611, Pg. 836, Official Public Records, Colorado County, Texas, and in Vol. 772, Pg. 701, Official Public Records, Wharton County, as modified, amended, reissued, and/or assigned in whole or in part now or hereafter from time to time; and

WHEREAS, the Landlord desires to lease the Rail Corridor Property from Mile Post 34.0 to Mile Post 61.2 near Eagle Lake, Colorado County, Texas (the “**Premises**”) to Tenant, and Tenant desires to lease the Premises from Landlord, under and subject to the terms and conditions set forth in this Lease for use as a trail system consisting of pedestrian and bicycle trails and related landscaping.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and intending to be legally bound hereby, the parties agree as follows:

1. Lease of Premises. The Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Permitted Use (as defined below) set forth herein, the Premises, and subject to the terms and conditions set forth in this Lease. Tenant shall receive possession of the Premises as of the Effective Date.

2. Warranty of Title; Condition of Premises. This Lease is granted insofar as the Landlord's title permits, but the Landlord specifically disavows any warranty of title to Tenant, and the Landlord shall not be liable to Tenant for any defect or encumbrance upon title to the Premises of any portion thereof. The Landlord makes no representation or warranty as to the current condition or value of the Premises, that the Premises is fit for the intended use thereof, or compliance with applicable laws. **TENANT AGREES TO ACCEPT THE PREMISES "AS IS," "WHERE IS" AND "WITH ALL FAULTS."** Specifically, Tenant acknowledges that the Premises are subject to all applicable easements, a federal Trail Agreement with Union Pacific Railroad for possible future restoration of freight rail service within the Rail Corridor Property, and all other matters of record in Colorado, Fort Bend, Wharton, and Austin Counties or matters visible on the ground that may be disclosed by inspection or survey.

3. Term and Rent. This Lease shall be for a term ("**Term**") of thirty (30) years, commencing on the Effective Date, with two (2) subsequent thirty (30) year options (each, a "**Renewal Term**"). This Lease and the Term hereunder shall automatically renew for each thirty (30) year Renewal Term unless Tenant notifies the Landlord of its intent not to renew this Lease by written notice delivered to Landlord at least six (6) months prior to expiration of the initial Term of this Lease or the Term as extended by any Renewal Term then in effect, as applicable. Rental payment shall be \$1.00 annually due upon execution of this Lease and each one-year anniversary thereafter, with the Tenant assuming all improvement, maintenance and operation costs within the Premises during the Term of this Lease, as extended by any Renewal Term.

4. Tenant Covenants. For and in consideration of this Lease and the rights herein granted to Tenant, Tenant covenants and agrees as follows:

- a. Within two (2) years after the Effective Date of this Lease, the Tenant must deliver to Landlord for Landlord's review and approval an overall master plan of the development of the trails, landscaping, hardscape and related improvements proposed to be constructed and/or installed within the Premises (the "**Master Plan**"). The Master Plan submitted to Landlord for approval must include the following details:
 - i. An outline of the development of the Premises in multiple phases (the "**Phasing Plan**"). Each phase described in the Phasing Plan is herein referred to as a "**Phase**;"
 - ii. A schedule for completion of the Pre-Development Work (as defined below) for each Phase and all other work and improvements included in each Phase of development reflected on the Phasing Plan (the "**Phasing**

- Schedule**”), including details of all conditions precedent, third party approvals, materials, supplies, and contracts required to proceed from the first Phase detailed in the Phasing Plan (“**Phase 1**”) to the subsequent Phase or Phases of the Phasing Plan to be implemented within the Premises (the “**Additional Phase Conditions**”)
- iii. Conceptual schematics, plans and specifications for Phase 1 development within the Premises, including (without limitation) the specific location of Phase 1 area within the Premises, a description of improvements to be constructed as Part of Phase 1, schedule for completion and commencement of operation of Phase 1, and a engineer estimated budget for construction and completion of Phase 1;
 - iv. A description of operations planned and intended to be implemented for Phase 1 trail and related improvements within the Premises;
 - v. Location of mile markers and identification of such mile markers within each Phase as described in the Phasing Plan;
 - vi. The proposed maintenance and security plan for the Premises, including developed and undeveloped Phases of the Premises;
 - vii. A plan for and description of interlocal agreements with other governmental entities to the extent required in in connection with implementation of the Master Plan for the Premises; and
 - viii. Details for the construction and installations within the Premises (and indication of the Phase in which same will be part) of the connection point for the trail system within the Premises to connect to the existing or planned trail system development located immediately east of the Premises to be constructed and/or installed in the Premises’ must connect.
- b. Within the time period required for each Phase pursuant to the Phasing Schedule contained in the Phasing Plan, the Tenant must: (i) clear the Premises of overgrowth, (ii) remove, dispose, or recycle abandoned railroad fixtures such that they no longer disturb the Premises, and (iii) visibly mark locations of dangerous conditions within the Premises (the “**Pre-Development Work**”). Prior to and as a condition precedent to commencement of the Pre-Development Work, the Tenant shall deliver to Landlord for review and approval the contracts, plans, specifications and other documents and information detailing the nature and scope of the Pre-Development Work (the “**Pre-Development Work Details**”) for Landlord’s review and approval, which approval may be withheld in Landlord’s sole and reasonable discretion. Tenant shall not commence any Pre-Development Work prior to obtaining Landlord’s approval of the Pre-Development Work Details.
- c. Tenant shall prepare plans, specifications and construction drawings for each Phase within the overall Master Plan (each, the “**Phase Plans**” with respect to the applicable Phase) and submit such Phase Plans to Landlord prior and as a condition precedent to commencement of any work toward completion of the Phase Plan for any applicable Phase. Landlord’s approval of a Phase Plans may

be withheld in Landlord's sole and reasonable discretion. Phase Plans for each Phase must conform with the overall Master Plan Previously approved by Landlord in writing and applicable to such Phase. The Tenant shall submit the Phase Plans to Landlord for each Phase of the Master Plan (i) prior to commencement of Phase 1 with respect to Phase 1 within the Premises, and (ii) once sixty-six percent (66%) of any prior Phase within the Premises has been completed. Landlord's review of any Phase Plans shall include (without limitation), review to confirm the preservation of the contiguity of the trail corridor within the Premises between Phases, and Landlord's denial of its approval of any Phase Plan for failure to comply with any and all requirements, restrictions, rules, regulations, orders, legal requirements, and/or laws applicable to the Premises (including, without limitation, under the orders of the STB, Railbanking Regulations, Interim Trail Use Agreements, any conditions to the purchase of the Premises by Landlord from METRO, and related agreements), shall be deemed reasonable for purposes of this Lease.

- d. On completion of each Phase, Tenant shall deliver a completion report to Landlord, which shall include final "As-Built" plans and final "As-Built" surveys of the portions of the Premises within such completed Phase. Landlord has the right, but not the duty or obligation, to inspect the development and construction of each Phase of the Master Plan developed within the Premises to ensure conformity with the Landlord approved Master Plan, Phase Plans, and contiguity of the trail corridor within the Premises between Phases. Notwithstanding anything to the contrary contained herein, Landlord in its inspection or approval of any Phase, any Phase Plan, the Master Plan or other documents submitted by Tenant to Landlord in connection with the development of the Premises for the Permitted Uses hereunder shall in no way mean or be interpreted to indicate compliance of the Tenant's plans and specifications with governmental codes and ordinances, state and federal laws, and Landlord shall have no liability for its decisions made and in no event shall be responsible for: (1) errors in or omissions from the plans and specifications submitted, (2) supervising construction for the Tenant's compliance with approved plans and specifications or any applicable governmental codes and ordinances, state and federal laws.
- e. Tenant shall construct, install and maintain the Premises and any and all improvements constructed therein during the construction and installation thereof and thereafter during the Term of this Lease in accordance with any and all governmental codes and ordinances, state and federal laws applicable to Tenant and/or the Premises.
- f. Tenant must provide an annual status report to Landlord on each anniversary of the Effective Date during the Term of this Lease on a form and including content acceptable to Landlord (the "**Annual Status Report**"). In any event, the Annual Status Report must include an overview and supporting documentation regarding (i) any modifications, amendments to the Master Plan,

Phasing Plan, and/or Phasing Schedule, (ii) schedule and timing for anticipated commencement and completion of development of additional Phases per the Master Plan and Phasing Plan, (iii) the maintenance and/or repair/replacement of Tenant Improvements within the Premises in the prior year and any scheduled, planned or ongoing maintenance and/or repairs of Tenant Improvements within the Premises, and (iv) any planned capital improvement projects within the Premises, and (v) such other information as reasonably requested by Landlord.

- g. Tenant shall not do or suffer anything to be done whereby the Premises, or any part thereof, may be encumbered by a mechanic's, materialman's, or other lien for work or labor done, services performed, materials, appliances, or power contributed, used, or furnished in or to the Premises or in connection with any operations or any other activity of Tenant. Tenant shall be required to provide Landlord with a payment and performance bond naming Landlord as primary obligee directly from Tenant or its contractor in an amount of the applicable construction contract prior to commencement of construction of work and/or improvements, including, without limitation, any Pre-Development Work, within any Phase based on such Phase Plans for the applicable Phase then being constructed in accordance with the requirements set forth below. The form of any payment and performance or completion bond, or other security obtained by Tenant pursuant to this Section 4(g) shall be subject to Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. If Tenant or any contractor engaged by Tenant elects to post a payment or performance bond or is required to post such a bond with a public agency in connection with the above, Tenant agrees to include Landlord as an additional obligee. Any contractor engaged by Tenant to perform any work or services in connection with the Premises shall furnish to Tenant, at its own expense at the time of entering into a contract with Tenant for such services, payment and performance bonds issued by a corporate surety authorized to issue surety insurance in Texas in an the amount of such contractor's contract, securing the payment of all claims for the payment and performance of labor or services or the furnishing of materials for, the Payment and performance of the contract, and naming Landlord as a beneficiary of such bonds.

Tenant shall deliver copies of such bonds to Landlord within ten (10) days of receipt thereof, and in any event prior to commencement of the work and improvements, including without limitation, Pre-Development Work, for each Phase. If Tenant performs its own contractor services, the bonding requirements of this Section shall apply to Tenant as if it was a third-party contractor.

5. Use of Premises. Tenant's use and operation of the Premises must comply with the following:

- a. Tenant shall use the Premises solely as a public trail system (the “**Trail**”) consisting of pedestrian and bicycle trails and related landscaping and improvements, including, without limitation, lighting, benches, public access points, public restroom facilities or temporary rest stop facilities, dog parks, distance markers for emergency location finding, and “way finder” signage or system (the “**Permitted Use**”), subject to the terms, conditions, restrictions, and requirements of Section 5(f) below and otherwise set forth in this Lease. Tenant may also use the Premises for any related revenue generating concessions provided that all revenue is used by Tenant to support development, maintenance, repair, and operational expenses of the Trail. At all times the Premises shall be and remain open for public and private use on a non-discriminatory basis.
- b. Tenant shall recognize Landlord as a partner and contributor to the Trail in any website, marketing, media content, maps, and marketing material related to the Trail or in connection with Trail events and operations within the Premises as permitted by the terms of this Lease.
- c. Tenant shall not be permitted to charge admissions or fees for entry onto the Premises for use of the Trail or any Tenant Improvements (as defined below) within the Premises. However, Tenant may charge fees (i) for special events granting users temporary exclusive use of portions of the Trail or Trail Improvements on a reservation basis or (ii) to generate revenue from concessions at the Trail or within Trail Improvements, and/or (iii) to generate revenue through sponsorships of the Trail or Tenant Improvements therein.
- d. Tenant may construct and/or install improvements within the Premises that are consistent with the Permitted Use and in compliance with any and all applicable laws, including any applicable provisions of or regulations promulgated under the Americans with Disabilities Act, as amended (“**Tenant Improvements**”), and the terms and conditions of this Lease, subject to the prior written consent and approval of Landlord, not to be unreasonably withheld, conditioned or delayed. The approval and/or consent of Landlord to the construction and/or installation of any Tenant Improvements hereunder shall not be deemed to be evidence of compliance of such Tenant Improvements with the Railbanking Regulations or the Interim Trail Use Agreements.
- e. Any and all signage located within the Premises or as part of the Tenant Improvements must comply with the sign regulations then adopted by the Landlord (the “**Sign Regulations**”). A copy of the Sign Regulations in effect as of the date of this Lease is attached hereto as **Exhibit B** and incorporated herein by reference.
- f. Tenant pledges to maintain the Premises for future rail use, including but not limited to rail or fixed guideway commuter or other transit use as well as future rail use as contemplated under the Railbanking Regulations. The Tenant will

cooperate and assist with any efforts (i) of the Landlord and/or METRO to ensure the preservation of the Rail Corridor Property by METRO or on METRO's Retained Property in Harris County, Texas, and (ii) by Landlord, for itself and for the County, in Fort Bend, Wharton, Austin and Colorado Counties, Texas as required by Railbanking Regulations. The Tenant further agrees to:

- i. Not construct any roadway facilities within the Rail Corridor Property unless same are designed to accommodate park-and-ride bus service, which would be implemented by Landlord, possibly in cooperation with METRO and other entities, at such time as Landlord deems it useful; and
- ii. Preserve a corridor for rail or fixed guideway commuter or other transit service and other rail use as contemplated under the Railbanking Regulations ("**Rail Use**") by doing one of the following:
 - A. Retaining a strip of land 26-foot wide either in the median of a roadway facility or alongside it or, where right-of-way is limited, retaining a strip of land of sufficient width to accommodate columns for an elevated transit line; provided that any such strip of land must connect at grade with the western boundary line of METRO's Retained Property and the alignment of such strip of land must be designed to provide appropriate curvatures to allow future restoration of Rail Use in the Rail Corridor Property and METRO's Retained Property; or
 - B. Designing certain lanes of a roadway so that they can be converted to rail transit use.
- iii. Maintain the Rail Corridor Property for future Rail Use and cooperate with Landlord, METRO, and their respective successors and assigns, to ensure the preservation of the Rail Corridor Property and METRO's Retained Property for future Rail Use.
- iv. Provide to Landlord and/or METRO documents indicating the measures taken to preserve transit use upon request by Landlord.
- v. Assume full responsibility for the management of the Rail Corridor Property and any interim improvements thereon or uses thereof permitted hereunder, and legal liability arising out of such improvements and/or use by the Tenant.
- vi. Assume full responsibility for payment of any taxes that may be levied or assessed against the trail within the Premises and any improvements thereon.

- g. Landlord reserves the right to construct improvements on the Premises, including (without limitation), installing future transportation facilities on the Premises, at least fifty feet (50') in width total, which may be as two (2) minimum twenty-five feet (25') lanes on either side of the trail improvements in completed phases of the Master Plan.
- h. Any and all decisions related to the use and improvement of the Rail Corridor Property shall be subject to the prior approval and written consent of Landlord, and in no event shall Landlord be required to approve or consent to any use or improvements within the Rail Corridor Property that would fail to maintain the Rail Corridor Property for future rail use as contemplated under the Railbanking Regulations. In any event, the use of the Rail Corridor Property by the Tenant shall in all events be subject to restoration or reconstruction for railroad purposes, as contemplated under the Railbanking Regulations.
- i. Tenant may contract with a third party with experience and expertise in managing public trails similar to the Trail and Premises to manage and operate the Premises (the "**Trail Operator**"), which Trail Operator shall be subject to the prior written approval of the Landlord. However, in no event shall the engagement of a Trail Operator by Tenant relieve Tenant of any of its obligations, duties or covenants under this Lease.
- j. The Tenant is hereby expressly prohibited from use of the Premises for, and in no event shall the Permitted Use include, (i) any use or operation that violates applicable laws, (ii) any use that is likely to create a nuisance or result in trespass onto private property abutting the Premises, or (iii) display of permanent or temporary advertising signage (other than signage recognizing sponsors or donors of Tenant Improvements within the Premises, which are expressly permitted hereby, subject to any applicable sign regulations or requirements).

6. **Improvements; Approvals.** The Tenant shall develop the Premises and any Tenant Improvements thereon in a manner consistent with the terms, conditions and requirements under this Lease, the Railbanking Regulations, and the Interim Trail Use Agreements. The Tenant's Improvements shall include and Tenant shall be responsible for operation and implementation of a commercially reasonable emergency location finder system for all trail phases open for operations within the Premises. Tenant will be responsible for the acquisition of any approvals or permits from, or required by, and compliance with any validly existing orders from the applicable municipal and/or county authority with jurisdiction over the Premises, the State of Texas, the STB and/or any other governmental or regulatory body having jurisdiction over the Premises or any Tenant Improvements thereon. Tenant shall provide to Landlord in the Annual Status Report details and supporting documentation related to the status of development of new Tenant Improvements commenced or completed in the prior calendar year and the condition of existing Tenant's Improvement within the Premises. Additionally, within thirty (30) days after substantial completion of any Tenant Improvements within a Phase of the Premises, Tenant shall deliver to

Landlord the “as built” plans and specifications for such Tenant Improvements in such Phase, including a site plan of the Premises or Phase thereof on which such Tenant Improvements are located.

7. Maintenance; Utilities. (a) Landlord shall not be required to perform any rehabilitation or maintenance of any existing improvements located within the Premises. Subject to the prior written approval of Landlord and Landlord’s legal counsel, Tenant may remove rail ties, rail track and signal equipment from the Premises and retain any value received from salvage of such rail ties, rail track and signal equipment; **provided, however, in no event may Tenant remove any bridges, tunnels, or culverts from or existing on the Premises.** Tenant shall maintain and operate the Premises any and all Tenant Improvements or other improvements thereon at Tenant’s sole cost and expense. The Tenant shall immediately notify Landlord in writing of any violations of the terms of this Lease or other concerns revealed by Tenant’s inspections of the Premises or Tenant’s Improvements therein. The Tenant shall provide in the Annual Status Reports to the Landlord details and supporting information regarding the maintenance activities, results of inspections and actions taken, and other activities encompassed in this provision in the prior year and the ensuing year.

(b) Tenant shall, during the Term of this Lease (including any Renewal Term), (i) maintain the Premises and all Tenant Improvements, buildings and improvements thereon (interior and exterior, structural and otherwise) in good order and repair, ordinary wear and tear excepted consistent with the Landlord approved Phase Plans for each Phase of the Premises; (ii) not commit waste or permit impairment or deterioration of the Premises (normal wear and tear excepted); (iii) comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Premises (including, without limitation, the Sign Regulations); (iv) provide prompt notification to Landlord of any material adverse changes to the Premises of which Tenant is aware; and (v) return the Premises and all Tenant Improvement, buildings and improvements thereon at the expiration of the Term of this Lease (as may be extended by any Renewal Term) in as reasonably as good condition as when received, ordinary wear and tear excepted.

(c) Tenant shall pay all charges for heat, water, gas, sewage, electricity and other utilities used or consumed on the Premises and shall contract for the same in its own name. Landlord shall not be liable for any interruption or failure in the supply of any such utility service to the Premises.

8. Right of Entry. The Tenant shall have the exclusive right to maintain and operate the Premises, provided, however that Landlord retains a right to enter onto the Premises for the purpose of inspecting the Premises. Whenever possible, the Landlord shall provide advanced notice of any entry onto the Premises that impact any Tenant Improvements. The Landlord shall have no obligation to Tenant to provide security or inspections of the Premises, and shall have no specific obligations to Tenant as to the rehabilitation, repair, maintenance, or operation of the Premises or any Tenant Improvements thereon.

9. Notification of Claims. Landlord and Tenant shall give prompt and timely notice to one another of any claim made or suit instituted which in any way directly or indirectly,

contingently or otherwise affects or might affect Landlord, Tenant, Tenant Improvements or Tenant's right to use the Premises.

10. Taxes and Assessments. It is understood between the parties that the Premises are currently exempt from real estate taxes. However, should all or any portion of said Premises become taxable during the Term of this Lease as a result of Tenant having the use of said Premises, then Tenant shall be responsible for all real estate taxes and assessments applicable thereto. Landlord shall not be responsible for any real estate taxes or assessments levied upon said Premises during the Term of this Lease.

11. Assignment and Sub-letting. Tenant shall not assign this Lease in whole or part, nor sublet all or any part of said Premises without first obtaining written consent from Landlord, which consent may be withheld or denied in Landlord's sole and absolute discretion.

12. Casualty. If the Premises and/or any Tenant Improvements therein are damaged or destroyed by fire, flood, tornado or other element, or by any other casualty, this Lease shall continue in full force and effect and, subject to the availability of insurance proceeds, and unless otherwise agreed to by Landlord, Tenant shall promptly (and in any event within sixty (60) days of such event of casualty), using its best efforts, restore, repair or rebuild the portions of the Premises and Tenant Improvements damaged or destroyed to substantially the same condition as same existed before the damage or destruction (wear and tear excepted), including any improvements or alterations required to be made by any governmental body, county or city agency, due to any changes in code or building regulations. Tenant shall for this purpose use all, or such part as may be necessary, of the insurance proceeds received from insurance policies required to be carried under the provisions of Section 13 of this Lease. Tenant may be required to expend sums in excess of insurance proceeds available for such restoration, less and except any deductible. In no event shall Tenant be permitted to terminate this Lease as a result of any event of casualty, and Tenant's obligation to repair and restore the Premises after an event of casualty shall be absolute.

13. Liability; Indemnification. (a) Tenant for itself and all its managers, licensees, invitees, agents, and/or invitees assumes all risk of loss of any kind related to the use and occupancy of the Premises by Tenant, and waives all claims against Landlord for all claims, damages, and/or losses arising under this Lease or related to the entry on, use, or operation of the Premises or any Tenant Improvements thereon. To the maximum extent permitted under applicable law, **TENANT SHALL INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS FOR, FROM AND AGAINST ALL CLAIMS, DAMAGES, SUITS, JUDGMENTS OR CAUSES OF ACTION ON ACCOUNT OF INJURY TO OR DEATH OF PERSONS OR LOSS OR DAMAGE TO PROPERTY, OR AS A RESULT OF ANY ACT OR OMISSION OF TENANT IN VIOLATION OR CONTRAVENTION OF THE TERMS OF THIS LEASE WHICH MAY RESULT FROM, ARISE IN ANY MANNER OUT OF THE MANAGEMENT, CONTROL, USE, OCCUPANCY, OPERATION, OR IMPROVEMENT OF THE PREMISES OR ANY TENANT IMPROVEMENTS THEREON DURING THE TERM OF THIS LEASE.** Tenant shall acquire commercial liability insurance in an amount no less than One Million and No/100 Dollars (\$1,000,000.00) per

occurrence and Two Million and No/100 Dollars (\$2,000,000.00) combined single limits, in a form satisfactory to Landlord, and including the Landlord as additional insured and/or loss payee, as applicable, for protection from any liability above described at no cost or expense to Landlord. A waiver of subrogation must be included in the Tenant's insurance. Tenant shall provide Landlord with a certificate of insurance or other evidence of coverage reasonably requested by Landlord upon execution of this Lease and annually thereafter. The indemnity and other obligations of Tenant under this Section 13 shall survive termination or expiration of this Lease.

(b) Tenant must require all private concessionaires, users, and event sponsors with respect to use and occupancy of the Trail, Tenant Improvements or Premises to provide as a condition to their temporary exclusive use of all or any portion of the Trail, Tenant Improvements or Premises a contractual indemnification supported by liability insurance in a form and content, and with coverage and policy limitations, acceptable to Landlord ("**Third Party Indemnity and Insurance**"). The Third Party Indemnity and Insurance shall be for the benefit of Landlord and Tenant and include both the Landlord and Tenant as an additional insured. If and to the extent, the Tenant permits sublicensees or any third-party use (including but not limited to privately sponsored uses and events such as charity races, athletic club usage, and trail "adoptions") within the Premises, then each third party must provide the Third Party Indemnity and Insurance with insurance coverage that at least matches the insurance requirements listed in this Section 13. Any third party user or occupant of the Premises must provide the Landlord with a certificate of insurance evidencing the insurance requirements of any Third Party Indemnity and Insurance have been met.

(c) Notwithstanding anything herein to the contrary, Landlord shall in no event be liable to Tenant for any indirect or consequential damages, and no personal liability of any kind or character whatsoever now attaches or at any time hereafter under any conditions shall attach to Landlord or any partners, officers, directors, or consultants of Landlord as applicable under or in relation to this Lease.

14. Environmental Matters. The term "**Hazardous Substances**" as used in this Lease shall mean pollutants, contaminants, mold, toxic or hazardous wastes, or any other substances, the removal of which is required or the use of which is restricted, prohibited or penalized by any "**Environmental Law**," which term shall mean any federal, state or local law or ordinance relating to pollution or protection of the environment. Tenant hereby agrees that (i) no activity will be conducted on the Premises that will produce any Hazardous Substance; (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances; (iii) no portion of the Premises will be used as a landfill or a dump; (iv) Tenant will not install any underground tanks of any type; (v) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; (vi) Tenant will not permit any Hazardous Substances to be brought onto the Premises. If, at any time during or after the Term of this Lease (as may be extended by any Renewal Term), the Premises is found to be so contaminated or subject to said conditions, to the maximum extent permitted under applicable law, **TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS FROM ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, COSTS, EXPENSES, DAMAGES AND OBLIGATIONS OF ANY NATURE ARISING FROM OR**

AS A RESULT OF THE USE OF THE PREMISES BY TENANT. The foregoing indemnification shall survive the termination or expiration of this Lease.

15. Notice. Notice required to be given by either party shall be in writing, sent by certified mail, return receipt requested addressed to Landlord or Tenant as follows:

a. If to Landlord: Fort Bend County Toll Road Authority
1950 Lockwood Bypass
Richmond, TX 77469
Attention: _____

With a Copy to: The Muller Law Group, PLLC
202 Century Square Blvd.
Sugar Land, Texas 77478
Attention: Shima Jalalipour

b. If to Tenant: 1093 Rails To Trails Local Government Corporation

Attention: _____

With a Copy to: Olson & Olson
2727 Allen Parkway, Suite 600
Houston, TX 77019
Attention: Justin Pruitt

Either party may change its address hereunder for purpose of upon at least ten (10) days' prior written notice delivered to the other party hereto pursuant to the requirements of this Section 15.

16. Default. (a) It shall be a default and breach of this Lease by either party if it fails to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under the Lease for a period of thirty (30) days after written notice given by the party claiming default (except as otherwise provided in Section 16(b) below); provided, however, that if the term, condition, covenant or obligation to be performed is of such a nature that the same cannot reasonably be performed within such thirty (30) day period, then it shall not be a default or breach of this Lease, so long as the party receiving the notice of default commences efforts to perform or observe the term, condition, covenant or obligation in question, and thereafter diligently undertakes to complete performance or observation as reasonably soon as possible. In the event of a default of Tenant under the terms of this Lease that is not timely cured, Landlord may pursue any and all remedies hereunder, at law or in equity against Tenant, including, without limitation, injunction, suit for damages, exercise of self-help rights to perform the Tenant's obligations or duties hereunder and invoice Tenant for the costs incurred by Landlord in performing same (plus interest at ten percent [10%] per annum or the maximum rate permitted under applicable law, whichever is less), or right to terminate this Lease.

(b) Notwithstanding the foregoing, the following shall be considered an default of Tenant under this Lease default and no notice of default shall be required from Landlord and no cure period shall apply prior to Landlord exercising its available remedies for the following Tenant defaults (except as otherwise stated below):

- (i) Failure of Tenant to carry insurance as required by the Tenant in Section 13;
- (ii) Failure of Tenant to enforce third parties' obligations to carry required insurance and provide indemnities pursuant to Third Party Indemnity and Insurance required by Landlord under this Lease, provided Tenant shall have a ten (10) day period after such third-party's entry and/or use of the Premises and/or Tenant Improvements (or applicable portion thereof) to cure such failure (no notice of default required from Landlord);
- (iii) Tenant will be in default of this Lease if it causes or permits obstructions to break the continuity of the trail within the Premises and such default is not cured within thirty (30) days after Landlord provides notice to Tenant; provided that if circumstances require (as determined in the sole and reasonable discretion of Landlord) Landlord may provide Tenant additional time in excess of thirty (30) days to cure such default and restore continuity of the trail, but in no event shall Tenant be entitled to more than ninety (90) days to cure such default.

17. Termination. This Lease may be terminated in whole or in part with respect to a Phase or multiple Phases by either the Landlord or Tenant upon a default as described in Section 16 hereof which has not been cured within the applicable cure period, effective as of the date written notice of termination has been given by the terminating party to the other party at the address set forth in Section 15 above (or such other date after any applicable cure period has expired as specified in such termination notice), provided that no notice of termination may be given before a default has occurred. Notwithstanding anything to the contrary contained in this Lease, Landlord has the right to terminate the Lease with respect to all or any portion of the Premises upon written notice to Tenant if Landlord or any other entity has a transportation project requiring the Premises or any part thereof; provided that the Landlord notifies the Tenant of such termination and identifies the portion of the Premises for which this Lease will be terminated by such notice in writing at least thirty (30) days before the effective termination date of such portion of the Premises.

18. Occupancies. Landlord will be entitled to retain all income from any existing occupancy agreements during the Term of this Lease or any extensions thereof, including, without limitation under the terms of the MCI easement for fiber-optic telecommunications line located within the Premises. Landlord may, during the Term of this Lease, or any extensions thereof, sell, lease, grant easements or licenses, or develop or otherwise utilize the Rail Corridor Property or any portions thereof, provided that such actions or use by Landlord does not unreasonably interfere with the Permitted Use of the Premises by Tenant pursuant to this Lease. Landlord shall notify Tenant in advance of any such action, and in cases where there could reasonably be any

interference or negative effect on the Permitted Use of the Premises by Tenant under pursuant to the terms of this Lease, Landlord shall first submit to Tenant its plans therefore for approval, which approval shall not be unreasonably withheld by Tenant. Such uses by Landlord may include, without limitation, transverse and longitudinal occupancies for public improvements (e.g., roads, sewers, etc., at, above or below grade) pipelines, power lines and energy corridors, the recreational trail, commercial development of air, subterranean and surface rights.

19. Return of Leased Premises. If Tenant shall violate any covenant of this Lease or if the Premises shall be used for any purpose other than the Permitted Use as above stated or in the event of the termination or expiration of this Lease, then and in such event and in the event of expiration of the Term (as may be extended by any Renewal Term), the Tenant agrees to quit and deliver up peaceable possession of the Premises to Landlord, and Landlord may thereupon reenter upon and take possession of the Premises and of every part thereof, either by force or otherwise, without any liability therefore, and have and enjoy the Premises as of its former estate, free, clear and discharges of this Lease and of all rights of Tenant. Except as set forth herein, Tenant, for itself and any sublessee, agrees to and does hereby waive all notices to quit now or hereafter required by any law or laws previous to proceedings to recover possession of the Premises.

20. Holding Over. If Tenant remains in possession of the Premises after expiration of the Term hereof, without Landlord's acquiescence and without any express agreement of the parties, Tenant will be in default under this Lease and Tenant shall be a tenant at sufferance at a Rent rate equal to **Eleven Thousand Three Hundred Twenty-Five and No/100 Dollars (\$11,325.00)** per month (or partial month); and there shall be no renewal of this Lease by operation of law. In addition, Tenant shall be liable to Landlord for all damages, including consequential damages, that Landlord may suffer by reason of any holding over by Tenant, and Tenant shall indemnify, defend, and save Landlord harmless against all costs, claims, losses, damages, or liabilities resulting from delay by Tenant in so surrendering the Premises, including any claims made by any succeeding tenant founded on any delay.

21. Records. Tenant shall maintain full and accurate records with respect to all matters covered by this Lease or related to the Premises or any Tenant Improvements thereon, at its principal office or place of business. Landlord and appropriate representatives of Landlord will be permitted, during regular business hours and at all reasonable times the Term and for three (3) years thereafter, to have access to original instruments, including records and copies thereof, in possession, custody or control of Tenant, and to examine and audit the same, including the right to make and carry away transcripts therefrom and to inspect all data, documents, proceedings and records or notes of activities. Tenant acknowledges that any records in the possession of the Landlord may be subject to an open records request.

22. No Estate in Land. This Lease shall create the relationship of Landlord and Tenant between the parties hereto; no estate shall pass out of Landlord. Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except by Landlord's consent.

23. Cooperation. Landlord will cooperate with Tenant's efforts to seek grants for project funding such as endorsing or evidencing consent to proposals.

24. Successors and Assigns. The terms and conditions of this Lease shall extend to and be binding upon the respective successors and assigns of the parties thereto as their respective interest may appear, as though in each case herein they had been specifically mentioned, provided however, that this Lease may not be assigned by Tenant except permitted by Section 11 above.

25. Non-Discrimination. Tenant shall not discriminate because of race, color, sex or national origin in any manner during Tenant's use or operation of Premises or any Tenant Improvements thereon.

26. Compliance with Law. Tenant at its sole cost and expense, shall comply with all applicable laws, and regulations of the any applicable governmental authorities, including, without limitation, the Texas Recreational Use Act, the Government of the United States, State of Texas, and ordinances of general application of the any municipal or county government with jurisdiction over the Premises with respect to the use, occupancy, construction, or maintenance of the Premises and Tenant Improvements by Tenant.

27. Governing Law; Venue. This Lease is to be construed in accordance with the laws of the State of Texas. Landlord and Tenant agree to submit to the jurisdiction of the state and federal courts located in Fort Bend county, Texas with regard to any action relating to this Lease and agree that all claims with respect to such action shall be heard and determined exclusively by such courts.

28. Severability. If any term, covenant, condition or provision (or part thereof) of this Lease or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereof, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

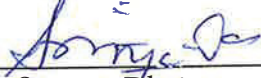
29. Captions. The section headings in this Lease are for convenience only and are without legal effect upon the terms hereof.

30. Entire Agreement. This Lease constitutes the entire agreement by and between the parties in connection with the lease of said Premises and no change, modification or waiver of such agreement shall be binding upon either party unless it is in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the Landlord and Tenant have caused this Lease Agreement to be signed in duplicate on the dates acknowledged below to be effective as of the Effective Date above written.

LANDLORD:

FORT BEND COUNTY TOLL ROAD
AUTHORITY,
a Texas local government corporation

By: 
Name: Swapan Dhairyawan
Title: Secretary

TENANT:

1093 RAILS TO TRAILS LOCAL
GOVERNMENT CORPORATION,
a Texas local government corporation

By: _____
Name: _____
Title: _____

EXHIBIT LIST:

Exhibit A – Legal Description of the Premises

Exhibit B – Initial Sign Regulations

IN WITNESS WHEREOF, the Landlord and Tenant have caused this Lease Agreement to be signed in duplicate on the dates acknowledged below to be effective as of the Effective Date above written.

LANDLORD:

FORT BEND COUNTY TOLL ROAD
AUTHORITY,
a Texas local government corporation

By: _____
Name: _____
Title: _____

TENANT:

1093 RAILS TO TRAILS LOCAL
GOVERNMENT CORPORATION,
a Texas local government corporation

By: *Belinda S. Halfin*
Name: BELINDA S. HALFIN
Title: 1093 RAILS TO TRAILS LGC
BOARD CHAIR

EXHIBIT LIST:

Exhibit A – Legal Description of the Premises

Exhibit B – Initial Sign Regulations

Exhibit A

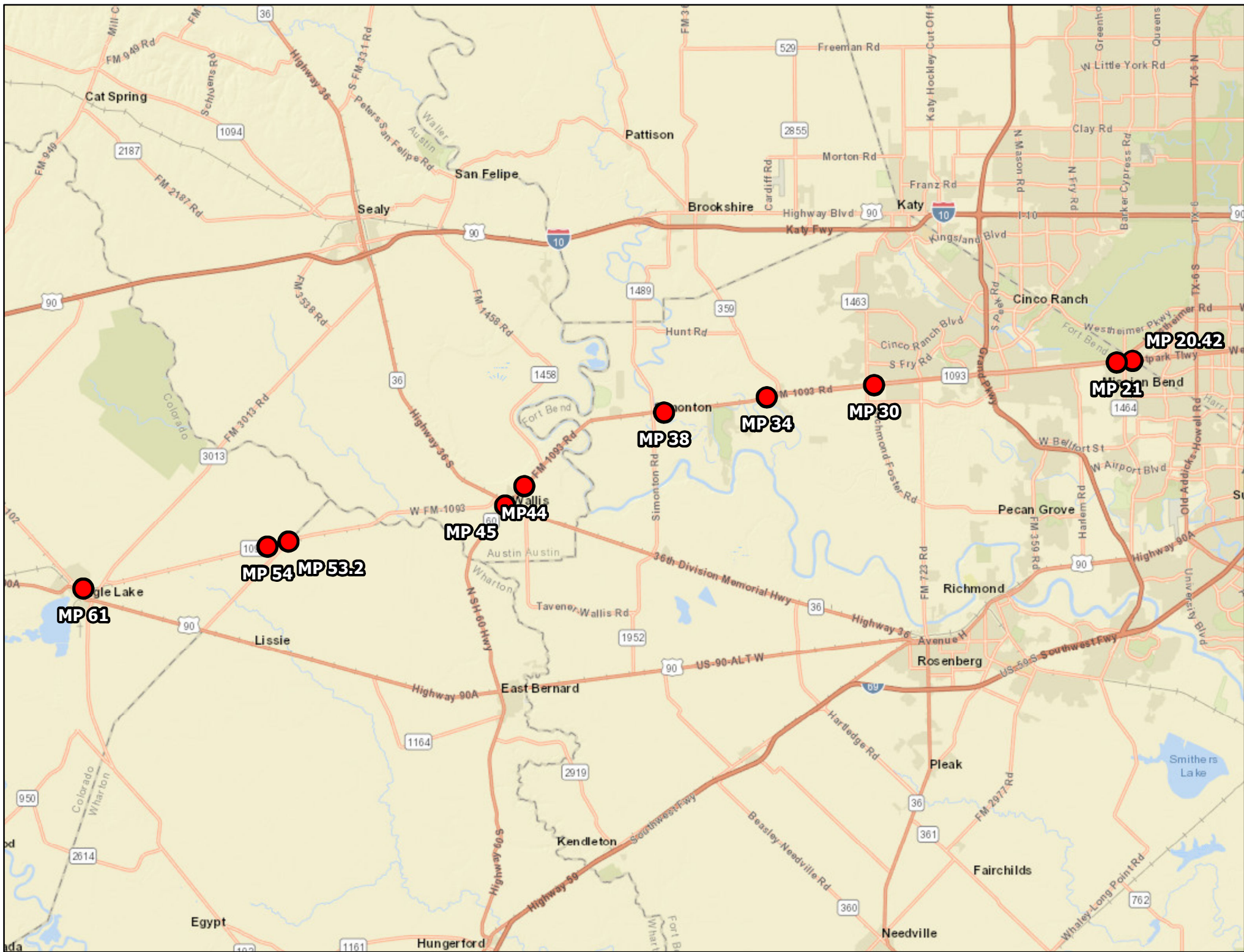


Exhibit B

**SIGN REGULATIONS APPLICABLE TO
THE FORT BEND PARKWAY, WESTPARK TOLLWAY, AND
GRAND PARKWAY TOLL ROAD IN FORT BEND COUNTY, TEXAS**

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DEFINITIONS

The following general definitions shall apply to these Regulations:

Abandoned Sign – means any Sign directing attention to any Person, place, or thing that was once, but is no longer, within the last 60 days, offered, available, or located at place described on the Sign.

Authority – means Fort Bend County Toll Road Authority or Fort Bend County Grand Parkway Toll Road Authority.

Bandit Sign or Lawn Sign – means a temporary Freestanding Sign commonly made from corrugated plastic, greyboard, or similar type of material.

Banner – means a Temporary Sign made of cloth, plastic, canvas, or other material and not permanently affixed.

County Toll Road – means any toll road in Fort Bend County, including, but not limited to, Fort Bend Parkway, Westpark Tollway, Grand Parkway, and any such toll road that may be constructed in the future and falls under the jurisdiction of Fort Bend County.

County Toll Road Attorney – means and includes any lawyer or law firm engaged by the Authority to provide legal services related to these Regulations.

County Toll Road Operator – means the designated agent(s) or employee(s) responsible for administering and enforcing these Regulations, as provided in Sections 1, 2, and 3 of these Regulations.

Electronic Sign – means any Sign that is capable of changing its message, copy, or appearance by electronic or mechanical processes.

Fence Sign – means any Sign affixed to or painted upon a fence. A Fence Sign is a Bandit Sign, for purposes of these Regulations.

Flag – A piece of fabric, cloth, plastic, vinyl, canvas, or other similar material that is the official symbol of a governmental entity in which it is located, such as the United States, the county, or a city or school district, used to denote presence in the entity's jurisdiction, attached to rope or clips and displayed from a permanently affixed freestanding or wall-mounted Pole.

Flag Pole – A freestanding or wall-mounted Pole specifically designed for displaying Flags.

Freestanding Sign – means an On-Premise Sign or 3-dimensional object, supported by a foundation that is not attached to any building or structure, whose components are permanently affixed. Freestanding Signs include Monument Signs, Pole Signs, Subdivision Entry Signs, and Temporary Signs.

Frontage – means the total length in feet of the Right-of-Way Line for a particular Premises.

Grade – means the natural level of the ground upon which the Sign Structure is placed. The Authority may take into account previous or proposed artificial manipulation of the ground level in determining compliance with these Regulations.

Illuminated Sign – Any Sign that contains electrical wiring or utilizes electricity to illuminate the Sign or its characters, letters, figures, designs, or outline.

Incidental Sign – means small Signs, generally less than 2 square feet in Sign Area, intended primarily for the convenience of the public, including address numbers, hours of operation, restroom, building entrance, help wanted, curbside to go pick-up area, delivery/loading dock, drive-thru, and other similar information.

Kelvin – base unit of thermodynamic temperature, equal in magnitude to the degree Celsius; used in lighting to measure the color temperature – the higher the Kelvin, the whiter the light.

Lumen – basic unit for measuring brightness.

Modification – means to change the size, shape, illumination, or classification of Sign.

Monument Sign – means a Freestanding Sign attached to a permanent foundation or decorative base and not attached or dependent on support from any building, Pole, posts, or similar uprights.

Off-Premise Sign – means a Sign directing attention to any Person, place, or thing not principally located on the Premises on which the Sign is located.

On-Premise Sign – means a Sign directing attention to any Person, place, or thing principally located on the Premises on which the Sign is located.

Permittee – means the Person granted a Sign permit.

Person – means an individual, corporation, association, or any other legal entity.

Pole – means a long, slender, usually cylindrical object.

Pole Sign – means a Sign (i) detached from a building and affixed to a Pole, or (ii) having a support structure narrower than the Sign Area.

Portable Signs – means any Sign not permanently attached to the ground or other permanent structure, or a Sign designed to be easily moved from 1 location to another. Portable Signs include, but are not limited to, benches, umbrellas, sandwich or menu boards, and all other unique portable displays, Vehicular Signs, and Signs mounted or painted on trailers, wheels, stakes, skids, or other non-motorized mobile structures. Portable Signs are not considered Temporary Signs.

Premises – means (1) for any developed property, the area of real property which encompasses all the buildings, structures, appurtenances, and contiguous land devoted to a common use and not separated by a public Street, such as a shopping center; or (2) for undeveloped property, the area of real property designated as a lot on a plat of record, or an unplotted tract of land as conveyed by deed or operation of law and recorded in the deed records of the County.

Reflectorized Lights – means any lamp constructed with reflector-type materials so as to focus, intensify, flood, or spot such lamp in a certain direction, including, but not limited to, lamps designated by the manufacturers as flood, spot, reflector, or reflector spot, reflector light, or clear reflector.

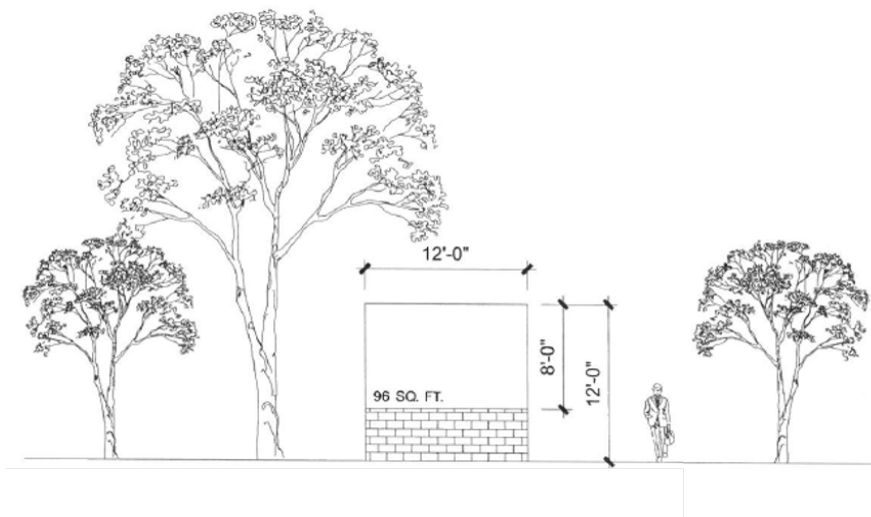
Right-of-Way – means land, property or interest, usually in a strip, owned by the Authority, and includes land for drainage of the County Toll Roads.

Right-of-Way Line – means a property line between the Right-of-Way on which a County Toll Road has been constructed or is planned, and adjacent private property.

Roof Sign – means a Sign erected or maintained above or on the roof of a building.

Sign – a notice that is publicly displayed giving information or instructions in a written or symbolic form, including, but not limited to, every name, number, identification, description and announcement, declaration, demonstration, advertisement, device, display, flag (but not Flag), banner, pennant, illustration, beacon, light or insignia, and structure supporting any of the same, affixed directly or indirectly to or upon any building or outdoor structure, or erected or maintained upon a piece of land, which directs attention to any Person, place, or thing.

Sign Area – measurement of the plane located at the tangent edge of the Sign that will encompass the outermost perimeter of the writing, graphic representation, emblem, or other display, together with any material or color forming an integral part of the background of the message or display or otherwise used to differentiate the Sign from the backdrop or structure against which it is placed, including any supporting framework; as viewed from the Right-of-Way. When Signs are composed of individual elements, the area of all Sign elements, which together convey a single complete message, shall be considered a single Sign. The Sign Area of a double-faced Sign shall be calculated using the area of 1 side only. The Sign Area of 3-dimensional or multi-faced Signs shall be calculated as the maximum Sign Area from the main-traveled way of a County Toll Road. The Sign Area of an Electronic Sign or an Illuminated Sign shall be calculated using the outermost perimeter of the electronic or illuminated display. In the illustration below, the “Sign Area” is 96 sq. ft.



Sign Owner – means the Permittee or the owner of the Premises upon which the Sign is to be or has been constructed, the owner’s authorized agent, or other Person responsible for installation or maintenance of the Sign or advertised on the Sign.

Sign Structure – means the structure which supports a Sign.

Spectacular Sign – mean any Sign that has 1 or more of the following as elements in its physical structure:

- (1) A Sign that changes its information or instructions more often than once every 8 seconds, or the change of message does not occur within 2 seconds simultaneously on the entire Sign Area;
- (2) Blinking, rotating, moving, chasing, flashing, glaring, strobe, scintillating or spot lights, or similar devices;
- (3) Lights or colored elements creating a moving, shimmering, or prismatic effect;

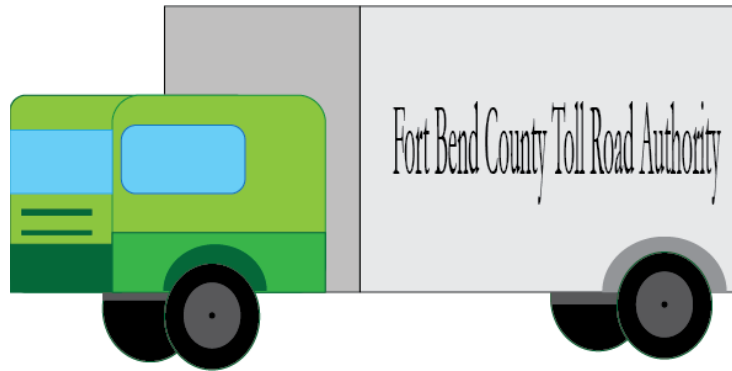
- (4) Rotating or moving parts; or
- (5) Contains any other component which the Authority determines may distract or impair drivers on the County Toll Roads.

Subdivision Entry Sign – means a Freestanding Sign that:

- (i) is located at a major entrance to a residential subdivision greater than or equal to 75 acres or a commercial subdivision greater than or equal to 25 acres; and
- (ii) (a) is located on a major thoroughfare or major collector road that intersects the County Toll Road Right-of-Way, or (b) is located on a property line of the subdivision that intersects the County Toll Road Right-of-Way.

Temporary Sign – means an On-Premise Sign constructed of canvas, cloth, plastic, cardboard, coroplast, or other like materials, not permanently affixed to the ground or a structure, and intended to be displayed for a period of less than 7 consecutive days in any 30-day period.

Vehicular Sign – means a Sign wrapped around, attached to, or painted on vehicles that are parked in a manner to be Visible from the main-traveled way of a County Toll Road.



Violation Notice – shall have the meaning provided in Section 2(c)(2) of these Regulations.

Visible – means that any message or part thereof of the Sign is legible or erected for the purpose of having the message seen from the main-traveled way of a County Toll Road. Any Sign within 660 feet of a County Toll Road shall be presumed Visible from that road, however, there is no presumption that Signs beyond 660 feet of a County Toll Road are not Visible from the road.

Wall Sign – means a Sign affixed to, supported by, or painted upon the exterior wall or window of any building. Signs on permanent awnings, canopies, or marquees attached to buildings are classified as Wall Signs.

Watt – means a measurement of power consumption; with traditional incandescent light sources typically the higher the wattage, the brighter the light.

Wayfinding Sign – means a Sign or series of Signs that assist in navigating from point to point.

Window Display – Any Sign, picture, symbol, paint, etching or combination thereof, designed to communicate information, that is placed inside of or upon the glass of a window or door and is visible from the exterior of the window.

SCOPE, STATUTORY AUTHORITY, AND STATEMENT OF PURPOSE

a. Statutory Authority

These Regulations are adopted by the Authority, pursuant to Chapter 395 of the Texas Transportation Code (“Transportation Code”) and Chapter 284 of the Transportation Code.

b. Scope

These Regulations apply to all Visible Signs. Signs that are located on land that is within 660 feet of the Right-of-Way Line along the County Toll Roads are presumed to be Visible and erected for the purpose of having the message seen from the main-traveled way.

Signs regulated under these Regulations and located on property within the territorial limits of a municipality or an ETJ of a municipality may be subject to additional regulation enacted by that municipality. A separate permit is required from a municipality or other governing entity who regulates signs in its jurisdiction. Approval of plans, issuance of a permit, or approval of work by the Authority does not constitute the approval by any other government entity.

Signs regulated under these Regulations may also be subject to more restrictive requirements pursuant to scenic easements, deed restrictions, or other land use restrictions established by private property owners and enforced by property owners’ associations. These Regulations are in addition to any obligation to comply with such requirements.

c. Statement of Purpose

These Regulations govern the placement, size, and certain aspects of Sign design to achieve visual continuity and reduce sign clutter along the County Toll Roads. Signs which may distract or impair drivers on the County Toll Roads pose a threat to the health, safety, and welfare of the traveling public.¹

These Regulations establish the permitting, construction, maintenance, and alteration requirements for all Signs placed along the County Toll Roads. The Regulations also establish fees associated with Sign permitting and penalties for violations of these regulations.

¹ “Digital billboard manufacturers should design such billboards with the minimal amount of animations to minimize the impact of distraction on drivers.... Updates of regulations shall consider restrictions in the frequency, placement and operation of digital advertising billboards in order to protect the safety of the public and reduce unnecessary cluttering and visual pollution.” *Digital Advertising Billboards and Driver Distraction*, National Center for Transportation Systems Productivity and Management, at 88 (April 2015). “Information overload may be possible when drivers either have to gaze at electronic changeable message highway signs too long, or drivers have to devote too much attention (mental effort) to extracting meaning from [such signs].” *Information as a Source of Distraction*, U.S. Department of Transportation, Federal Highway Administration, Publication No. FHWA-HRT-15-027, at 11 (November 2015).

These Regulations amend and supersede all prior sign regulations adopted by the Authority, to wit:

1. Order Establishing Regulations of Fort Bend County for the Placement of Signs Visible from the Main-Traveled Way of a Toll Road within Fort Bend County, Texas, effective January 24, 2006 (“2006 Regulations”);
2. Policy for Consideration of Variance Requests for the Placement of Signs Visible from the Main-Traveled Way of a Toll Road within Fort Bend County, Texas, effective January 25, 2011 (“2011 Variance Policy”);
3. Amended and Restated Order Establishing Regulations of Fort Bend County for the Placement of Signs Visible from the Main-Traveled Way of a Toll Road within Fort Bend County, Texas, effective October 25, 2011, which amended and restated the 2006 Regulations and incorporated and restated the 2011 Variance Policy (“2011 Regulations”);
4. Amended and Restated Order Establishing Regulations of Fort Bend County for the Placement of Signs Visible from the Main-Traveled Way of a Toll Road within Fort Bend County, Texas, effective August 27, 2013 (“2013 Regulations”).

PROCESS AND PROCEDURE

Section 1 – Permitting Application & Process

a. **Permit Required**

No Person shall erect, construct, reconstruct, Modify, maintain, or use a Sign Visible from the main-traveled way of a County Toll Road, without first obtaining a permit from the County Toll Road Operator, unless the Sign is exempt under Section 7(b) hereof or a Grandfathered Sign under Section 7(c)(1) hereof.

b. **Permit Application Process**

- 1) The application for a permit shall be submitted in such form as the County Toll Road Operator may prescribe and shall be accompanied by drawings and descriptive data to verify compliance with these Regulations. Every application shall be executed by the owner of the Premises upon which the Sign is to be or has been constructed, or by the owner’s authorized agent. If the Sign's plans and specifications conform to all requirements of these Regulations, the County Toll Road Operator shall issue the permit. Notwithstanding the foregoing, a permit issued under these Regulations does not authorize construction of a Sign in violation of any other land use restriction, ordinance, regulation, or statute.
- 2) Permit applications may be submitted and processed online via the following website:

- 3) Sign permit applicants shall provide such information as may be required by the County Toll Road Operator.

c. **Fee and Penalty Schedule**

Required fees and penalties are set forth in the fee and penalty schedule attached hereto as **Appendix A** and incorporated herein for all purposes. **Fees and penalties are non-refundable.**

d. Permit Approval

County Toll Road Operator shall be allowed up to 10 business days for processing, review, and approval of a permit application, pending no outstanding permit or processing issues. Once the permit application has been approved, the permit goes into effect on the next business day.

e. Permit Denial

In the event of the denial of a permit, the applicant will be notified in writing of the reason for denial within 10 business days of submission of a permit application. The applicant will have 30 days to address the issue(s) and resubmit any amendments or revisions to the application. After 30 days, the applicant will be required to submit a new application and fee.

If the County Toll Road Operator denies a permit application for a Sign, the applicant has 30 days from the date of denial to submit a written request for appeal to the County Toll Road Operator's office. The appeal request includes a request for a public hearing by the Board of Directors ("Board") of the Fort Bend County Toll Road Authority or Fort Bend Grand Parkway Toll Road Authority, as applicable, for reconsideration of the permit application.

f. Variations

- 1) If the County Toll Road Operator denies a permit application for a Sign, the applicant has 30 days from the date of denial to submit a written variance request to the County Toll Road Operator's office. The variance request includes a request for a public hearing by the Board for consideration. Alternatively, the applicant may submit the written variance request and request for public hearing to the County Toll Road Operator simultaneously with submission of the permit application.
- 2) A variance may be granted where (i) a strict application of the Regulations would create an undue hardship for the Sign user and (ii) the following criteria are met:
 - a. The granting of the requested variance would not be substantially detrimental to the property owners in the vicinity;
 - b. The hardship caused to the Sign Owner under a strict application of the Regulations is due to conditions unique to that property and does not generally occur in other properties affected by these Regulations; and
 - c. The granting of the variance to the Applicant, and those similarly situated, would not be contrary to the general objectives of these Regulations.
- 3) In considering requests for variances from the Regulations, the Board may consider, but is not limited to, the following factors:
 - a. Will the general purpose of the Regulations be maintained?
 - b. Will the proposed Sign be Visible primarily from another roadway that is not a County Toll Road?
 - c. Will granting the variance establish a result which, when applied to other applicants, would hinder the general purpose of the Regulations?

- 4) A variance may only be granted by an affirmative vote of at least 4 members of the Authority Board. The Authority shall make a finding to approve or deny the variance request, and the finding shall be recorded in the official minutes of the Authority.

Section 2 - Enforcement

a. Unlawful Signs

If any Sign is installed, erected, constructed, or maintained in violation of any provisions of these Regulations, the Board may initiate enforcement proceedings against the Sign Owner, as authorized in these Regulations, including, but not limited to, filing criminal charges², initiating permit revocation proceedings, or filing suit for injunctive relief from the violation. Removal of an unlawful Sign installed, erected, or constructed in violation of a permit or these Regulations, with the exception of Grandfathered Signs, shall not be subject to the compensation requirements of Chapter 395 of the Transportation Code.

b. Removal of Existing Signs

Grandfathered Signs may be ordered removed by the Board at any time, (i) in accordance with other applicable laws, including, but not limited to, Chapter 21 of the Texas Property Code, and (ii) provided compensation is paid as provided in Section 395.005 of the Transportation Code.

c. Permit Revocation

The County Toll Road Operator may revoke any permit authorized by these Regulations, if the permitted Sign is maintained or constructed in violation of these Regulations. If a permit is revoked, the Sign Owner must remove the Sign.

1) Offenses & Penalties

Person commits an offense under these Regulations by knowingly placing, erecting, or maintaining, or causing the placement, erection, or maintenance of any Sign that violates the provisions of these Regulations. Each day a violation occurs shall constitute a separate offense. Such an offense is a Class C misdemeanor and may be prosecuted as such pursuant to Section 395.010 of the Transportation Code.

2) Revocation and Appeals Procedure

- a. Prior to revoking a permit, the County Toll Road Operator shall send a written notice (“Violation Notice”) by certified mail or personal delivery to the Permittee, at their address of record, and provide an opportunity to contest, explain, or correct the issues, at a meeting of the Board. The Permittee shall be given the opportunity to present relevant facts

² Pursuant to Section 395.010 of the Transportation Code, violation of a rule adopted under Subchapter A, Regulation of Outdoor Signs by Toll Road Authority, is a Class C misdemeanor.

and legal arguments at the hearing conducted by the Authority. The written notice shall inform the Permittee of (a) the issues related to the Sign requiring such permit revocation, (b) the date of the proposed permit revocation if the issues are not address prior thereto, (c) the date, time, and place of the next scheduled Board meeting, and (d) the opportunity to contest, explain, or correct the issues, by presenting in person or in writing such matter to the Board at the next scheduled meeting as shown on the notice. The date specified for such permit revocation shall be no less than 10 days after the date of the next scheduled Board meeting as shown in the notice. The notice shall be deposited, postage paid, in a post office or official depository under the care and custody of the United States Postal Service or delivered via personal delivery at least 10 days prior to the date of the scheduled Board meeting. A written statement by the County Toll Road Operator that the notice was so mailed or delivered and a certificate of mailing by the United States Postal Service for certified mail or evidence of personal delivery shall be prima facie evidence of delivery of same. A fee in the amount of \$6.00 shall be charged by the County Toll Road Operator for each such notice mailed to a Permittee. If the Permittee appears before the Board in person or in writing, the Board shall hear and consider the matter and inform the Permittee of the Board's determination by sending written notice by United States first class mail to the Permittee at their address of record. Any Person wishing to appeal the decision of the Authority may do so pursuant to Section 2(c)(2)(b) of these Regulations.

b. Appeal of a Final Decision of the Authority

Pursuant to Section 243.007(c) of the Texas Local Government Code, the District Court has jurisdiction over all matters that arise from the denial, suspension, or revocation of a permit.

Section 3 – Administration & Enforcement Generally

a. Powers of the County Toll Road Operator

The County Toll Road Operator is hereby authorized and directed to administer and enforce all provisions of these Regulations. The duties of the County Toll Road Operator, as they relate to these Regulations, shall include, but are not limited to, issuing permits, ensuring all Signs are in compliance, inspecting Signs, investigating alleged violations, issuing violation notices for noncompliance, and assuring appropriate action is taken to correct noncompliance. The County Toll Road Operator may initiate enforcement action for the removal of a Sign and collect compensation for the costs associated with removal of that Sign.

b. Specific Powers

The County Toll Road Operator has the power and authority to enforce these Regulations. Included among these powers are the following specific powers:

- 1) The right to inspect and approve all Signs subject to these Regulations.
- 2) The right to review, approve, or deny all permit applications and to determine whether the proposed or existing Sign meets all requirements of these Regulations.
- 3) The right to enter on any Premises, with a court order, to remove a Sign;

- 4) Upon a finding of a violation of these Regulations, the County Toll Road Operator shall issue a Violation Notice and a stop work order (if applicable), and any work on a Sign deemed to be in violation of these Regulations shall cease immediately.
- 5) After issuance of a Violation Notice, the County Toll Road Operator shall initiate enforcement proceedings when necessary to enforce compliance. Such enforcement includes, but is not limited to, revocation of permits, impounding of Signs, removal of Signs, and any other penalty consistent with Section 2 of these Regulations.
- 6) The right to revoke all permits authorized by these Regulations for violations of any provisions pursuant to Section 2(c) hereof.

c. Enforcement

Any Person found in violation of these Regulations shall be punished in accordance with Section 2 and this Section 3. Additionally, upon request of the County Toll Road Operator, the County Toll Road Attorney is hereby authorized to take all equitable actions to insure compliance, including injunctive relief, the removal of a Sign, and the collection of compensation for the costs associated with removal of that Sign, pursuant to the terms hereof.

SIGN RESTRICTIONS

Section 4 – Prohibited Signs

No permit may be granted for the following Signs:

- a. Signs which do not conform to these Regulations;
- b. Signs on the Right-of-Way;
- c. Off-Premise Signs;
- d. Abandoned Signs;
- e. Bandit or Lawn Signs;
- f. Billboard Signs;
- g. Roof Signs;
- h. Portable Signs;
- i. Signs employing a stereopticon or motion picture machine;
- j. Spectacular Signs; and
- k. Strings, pennants, twirlers, propellers, flares, balloons, noise-creating wind devices, inflatable displays, and similar devices, including wind devices activated by natural or artificial means, are prohibited.

Section 5 - Sign Classification & Guidelines

a. Monument Sign

Height and Size Limitations at Grade:

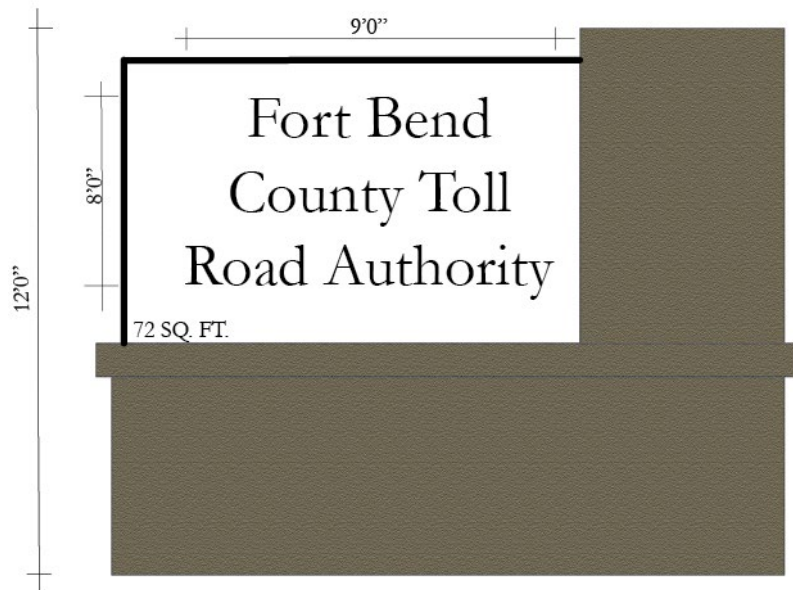
The maximum height of a Monument Sign, including its Sign Structure, is 12 feet above Grade. Sign Area for Monument Signs shall be no larger than prescribed in **Table A**.

TABLE A: MONUMENT		
Type of Building	Distance From Toll Road R.O.W. (in Feet)	Maximum Sign Area (in Square Feet)
Single Business	0-250	75
	250-500	100
Multi-Tenant 2-3 businesses*	0-500	200
Multi-Tenant 4 or more businesses*	0-500	300

*Individual business Sign Area shall not exceed 100 square feet.

Quantity Limitations:

Each building may erect 1 Monument Sign on or adjacent to the Right-of-Way Line. If a building has more than 1,000 feet of Frontage, then 1 additional Monument Sign per 1,000 feet of Frontage will be allowed, and must meet the size requirement in **Table A**, provided the Signs are separated a minimum of 500 feet apart. Notwithstanding the foregoing, the total number of Visible Monument Signs per multi-tenant building shall not exceed 5.



b. Subdivision Entry Signs

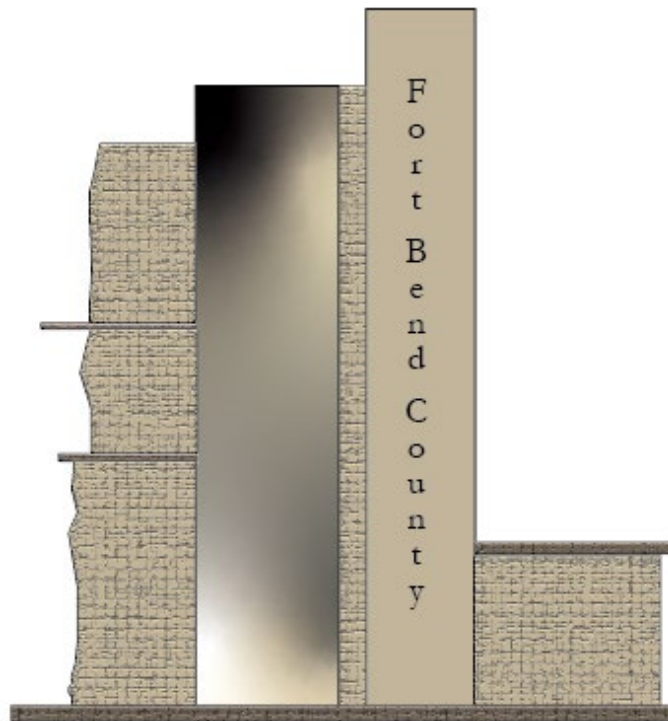
Height and Size Limitations at Grade:

Signs and Sign Structures shall be no larger than prescribed in **Table B**:

TABLE B: SUBDIVISION ENTRY SIGNS		
	Maximum Height Above Grade (in Feet)	Maximum Sign Area (in Square Footage)
Sign	12	200
	Distance From Toll Road R.O.W. (in Feet)	Maximum Height Above Grade (in Feet)^
Sign Structure	0-140	25-60
^Maximum vertical height of Sign and Sign Structure combined shall not exceed this value.		
** Maximum Height Above Grade of Sign Structure increases by 1 foot for every 2 feet horizontally offset from the Toll Road R.O.W., up to a maximum of 60 feet in height, as determined by the Regulations. Maximum elevation of Sign Structure cannot be more than 12" above the R.O.W curb edge.		

Quantity Limitations:

Each subdivision may erect 1 Subdivision Entry Sign on or adjacent to the Right-of-Way Line for each Subdivision Entrance located on a major thoroughfare or major collector road (“Entry Road”) that intersects the County Toll Road Right-of-Way or is located on a property line of a subdivision that intersects the County Toll Road Right-of-Way. For the purposes of these Regulations, 2 Subdivision Entry Signs on either side of the Entry Road leading to the same Subdivision Entrance are considered 1 Subdivision Entry Sign. Notwithstanding the foregoing, all Subdivision Entry Signs shall be no less than 1/2 mile apart, and the total number of Visible Subdivision Entry Signs shall not exceed 5 in number per subdivision.



c. Temporary Signs

Height and Size Limitations at Grade:

(1) The maximum combined height of a Temporary Sign and its Sign Structure is 5 feet above Grade. The Sign Area of a Temporary Sign shall not exceed 30 square feet.

(2) Method of Determining the Sign Area of a Temporary Sign:

In determining the Sign Area of a Temporary Sign, the dimensions of the rectangle enclosing the signboard, excluding the supporting structure, shall be used. If the Temporary Sign includes cutouts or facings extending beyond the dimensions of the rectangular signboard, the measurement of Sign Area shall include the actual area of the cutout or extended facings. For double faced, back-to-back, or V-type Signs, each face shall be considered a separate Sign in computing the Sign Area.

Quantity Limitation: Each business may erect 1 Temporary Sign per 500 feet.

Duration: A Temporary Sign can be displayed for no more than 7 consecutive days in any 30-day period, with the exception of a Temporary Sign posted on property that is actively marketed for sale, which may be displayed for no more than 90 consecutive days.

d. Wall Signs

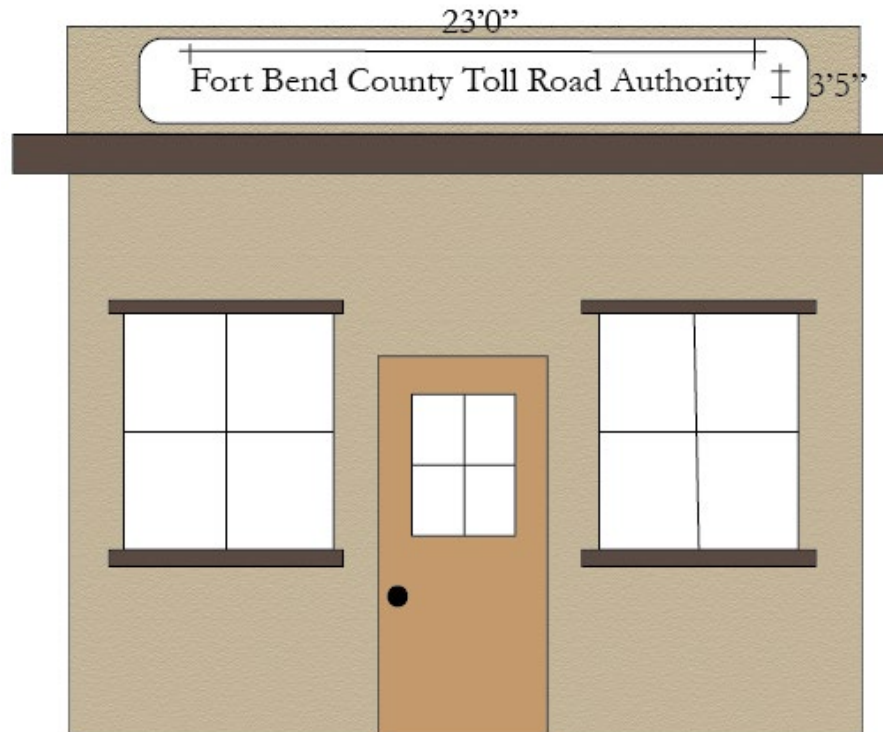
Height and Size Limitations at Grade:

Wall Signs shall be no larger than prescribed in **Table C**:

TABLE C: WALL SIGNS	
Distance From Toll Road R.O.W. (in Feet)	Maximum Sign Area (in Square Feet)*
<100	75
100	100
150	200
200	300
250	400
300	500
350	600
400	700
450	800
500	900
500+	1000
*Intermediate distances shall be rounded down for the maximum Sign Area of Wall Signs.	

Quantity Limitations

Each building may erect a maximum of 1 Wall Sign. If a building has more than 300 feet of building face along the County Toll Road, 1 additional Wall Sign per 300 feet will be allowed, provided the Signs meet the Sign Area requirement in **Table C** and are separated a minimum of 150 feet apart.



e. Illuminated or Electronic Signs

- (1) All Signs must meet the requirements in the Order for Regulation of Outdoor Lighting in the Unincorporated Areas of Fort Bend County, Texas, adopted March 23, 2004, and last amended August 29, 2006 (the "County Lighting Regulations"), in addition to the requirements in these Regulations.
- (2) All Illuminated Signs shall (i) meet the requirements listed in **Table D**, (ii) be limited to not more than 10 bulbs of 100 Watts or less, (iii) be limited to lighting circuits of 120 volts, (iv) contain a sunshade screen dimmer, (v) not use Reflectorized Lights as part of the face of the Sign, and (vi) contain lights which are effectively shielded to prevent beams or rays of light from being directed at any portion of the main-traveled way of a County Toll Road.
- (3) The lights on the Sign or Sign Structure cannot move, rotate, chase, flash, blink, or strobe, or be scintillating or spot lights, or similar devices.
- (4) The Sign may not contain lights or colored elements which create a moving, shimmering, or prismatic effect.

- (5) Lighting reflectors on Signs may project beyond the face of the Sign.
- (6) Every Sign shall provide rigid construction to withstand wind action in all directions.
- (7) Any changeable message shall not change more often than every 8 seconds, and the change of message must occur within 2 seconds simultaneously on the entire Sign Area.

TABLE D: ILLUMINATION REQUIREMENTS			
	Maximum Watts	Maximum Lumens	Maximum Kelvins
Units	100	1600	4000

Section 6 - Sign Maintenance

All Signs shall be kept in good repair and, unless of galvanized or non-corroding metal or treated with appropriate wood preservative, shall be thoroughly painted as often as good maintenance necessitates. All braces, bolts, clips, supporting frame, and fastenings shall be free from deterioration, termite infestation, rot, or loosening. If any Sign is not appropriately maintained, the County Toll Road Operator shall give written notice to the Sign Owner to repair, maintain, or remove the Sign within 30 days from the date of the notice.

Section 7 - Existing Signs

a. Non-Compliant

Any Sign erected without a permit, or that is permitted and is not in full compliance with the provisions of the Permit, shall be “Non-Compliant.” If it is determined that a Sign is “not permitted,” it will be subject to the enforcement provisions in Section 2 or 3 of these Regulations.

b. Permit Exempt

No permit shall be required for the following types of Signs, as long as they are not Spectacular Signs:

1. Window Displays;
2. Incidental Signs;
3. Wayfinding Signs;
4. Signs required by Federal, State, or local laws;
5. Legal notices and house numbers, including Signs which form an integral part of a canopy or marquee entrance and state only the street number;
6. Signs, not over forty square feet in Sign Area, placed on a Premises upon which construction activities of any type are being actively performed, or posted on a Premises that is actively marketed for sale or lease of the Premises; provided said Signs comply with all other provisions of these Regulations related to height and placement;
7. Temporary Signs;
8. Motorist Information Panel Signs authorized by order of the Commissioners Court of Fort Bend County, Texas, pursuant to Subchapter B of Chapter 395 of the Transportation Code³;

³ Under Section 395.057 of the Transportation Code, a toll road authority may not regulate a motorist information panel or business sign erected, maintained, or regulated under Subchapter B, Toll Road Informational Signs, under Chapter 395 of the Transportation Code.

9. On-Premise Signs setting forth the location of or directions to parking or buildings located on the Premises, or regulating the flow of on-Premises traffic, provided the Sign Area of such Signs shall not exceed 10 square feet. Such directional Signs may be lighted, consistent with the requirements of any applicable building codes and the County Lighting Regulations;
10. Flags, provided such Flags are properly displayed from either freestanding or wall-mounted Flag Poles; and
11. Displays placed within 500 feet of the Premises on which a one-time event is held, which may be displayed for up to 5 days before and 1 day after such event, provided such displays conform to applicable building, fire, and safety codes, and contain no flashing, blinking, or searching lights or mechanically moving parts.

c. Compliant

1. Grandfathered Signs

All conforming and nonconforming Signs existing and in place prior to the 2006 Regulations, effective January 24, 2006, are grandfathered, and shall not require a permit, provided the following conditions are met:

- i. Any substantial Modifications or repairs made to a Grandfathered Sign after the effective date of these Regulations, as amended, shall require a Sign permit conforming to the requirements of the effective date of these Regulations, as amended.
- ii. Grandfathered Signs must be found to be in compliance with any existing County regulations at the time of their installation and remain in compliance with the previously implemented regulations.

All conforming and nonconforming Signs existing and in place on or after January 24, 2006 until the effective date of these Regulations, are grandfathered, and shall not require a permit, provided the following conditions are met:

- i. Any substantial Modifications or repairs made to a Grandfathered Sign after the effective date of these Regulations, as amended, shall require a Sign permit conforming to the requirements of the effective date of these Regulations, as amended.
- ii. Grandfathered Signs must be found to be in compliance with the 2006 Regulations, the 2011 Regulations, the 2013 Regulations, or these Regulations, as applicable, at the time of their installation, and remain in compliance with the chosen regulations.

2. Damage or Repair

When any Sign, or a substantial part thereof, is blown down, taken down, destroyed, or removed for any purpose other than maintenance or the changing of letters, symbols, or other matter on the Sign, it shall not be re-erected or reconstructed except in full compliance with

these Regulations. Any Sign blown down or damaged must be fully repaired in compliance with these Regulations or completely removed.

3. Voluntary Change

Voluntary change of an existing Sign will require full compliance with these Regulations, including a new permit.

4. Relocation of Certain On-Premise Signs

Notwithstanding the provisions of this Section, any On-Premise Sign which has a valid permit, and which exceeds the height and size limitations contained in these Regulations, may be relocated on the same Premises, if:

- i. The Sign is removed from its present location because Fort Bend County acquired the property upon which the Sign is located through eminent domain or purchase; and
- ii. The Sign is relocated at the height and size indicated on the Sign's current permit and without any substantial alterations in the construction materials of the Sign; and
- iii. The Sign otherwise conforms to all other provisions of these Regulations at the time of relocation.

However, nothing in this Section shall restrict the right of the County Toll Road Operator to remove the Sign pursuant to Sections 2 or 3 of these Regulations.

MISCELLANEOUS

a. Identification of Signs

Every Sign for which a permit is required shall be plainly marked with the name of the Sign Owner.

b. Substitution

Notwithstanding anything set forth in these Regulations to the contrary, non-commercial content may replace the message on any Sign in compliance with these Regulations.

c. Interpretation

These Regulations and all terms and provisions hereof are intended to be content-neutral. In the event of any uncertainty, the Regulations shall be interpreted so that the content of a Sign is immaterial to the application of these Regulations to the Sign.

d. Fraudulent Information

The County Toll Road Operator may revoke any permit issued under the provisions of these Regulations if there has been any false statement or misrepresentation as to a material fact in the application or plans upon which the permit or approval was based.

e. Severability

If any provision of these Regulations or their applicability to any Person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the invalid or unconstitutional provision or application does not affect any other provision or applicability of these Regulations, which can be given effect without the invalid or unconstitutional provision or application, and to this end, the provisions of these Regulations are declared to be severable.

APPENDIX A

SIGN REGULATION FEES AND PENALTIES

Effective May 1, 2019

Application Fee:

Permanent Sign.....	\$ 100.00
Illuminated Permanent Sign.....	\$ 125.00
Temporary.....	\$ 35.00

Inspection

Initial Site Inspection.....	\$ 50.00
Re-Inspection	\$ 75.00

Citations

Non-Compliance (per Citation)	\$ 106.00
Removal (in addition to actual cost of removal)	\$ 250.00

**CHECKS SHOULD BE MADE PAYABLE TO
FORT BEND COUNTY TOLL ROAD AUTHORITY.**

EFFECTIVE DATE

THIS AGREEMENT IS EFFECTIVE ON THE DATE IT IS APPROVED BY THE FORT BEND COUNTY COMMISSIONERS COURT, AND IF NOT SO APPROVED SHALL BE NULL AND VOID.

DATE OF COMMISSIONERS COURT APPROVAL: April 23, 2019

AGENDA ITEM NO.: FBCTRA - 15B; and
FBGPTRA - 16B.